



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF SKIBIŃSCY v. POLAND

(Application no. 52589/99)

JUDGMENT

STRASBOURG

14 November 2006

FINAL

26/03/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Skibiński v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 24 October 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 52589/99) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Polish nationals, Ms Urszula Skibińska and Mr Henryk Skibiński ("the applicants"), on 2 March 1999.

2. The applicants, who had been granted legal aid, were represented by Mr W. Hermeliński, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and, subsequently, by Mr J. Wołosiewicz.

3. The applicants alleged that their right to the peaceful enjoyment of their property had been breached since the land they owned had been designated for expropriation at some undetermined future date. As a result, they had been refused final construction permits and under domestic legislation were not entitled to any compensation for this interference with their ownership.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 2 September 2004, the Court declared the application admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). Subsequently, this case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants owned a number of plots of land located in Częstochowa, on Wręczycka Street.

9. In 1979 a local land development plan was adopted under which a local health centre was to be built on their land. However, this plan was not implemented and apparently the land was later designated for the construction of small individual houses.

10. In 1991 the applicants requested the municipal authorities to reclassify their land so that it could be used for construction purposes. In December 1991 they were granted an initial approval for a development project on their land (*decyzja o warunkach zabudowy*).

In June 1992 they obtained a permit under Article 10 of the Land Administration and Expropriation Act 1985 to divide their plot, which was listed in the local land register as plot no. 1/1, into 15 smaller plots suitable for the construction of individual houses (*decyzja o zatwierdzeniu projektu podziału nieruchomości*).

11. In 1994 the Częstochowa Municipal Council announced that it was intending to adopt a new land development plan under which part of the applicants' property was to be used for the construction of a major roadway. On 17 October 1994 the applicants lodged their objections against the proposed amendments. On 27 October 1994 the amendments were adopted by the Council. The applicants' objections were not taken into consideration.

12. On 28 November 1994 the applicants requested that final construction permits (*zezwoleń na budowę*) be granted to them in respect of certain plots on the basis of the decisions given in 1991 and 1992 (see paragraph 10 above).

13. In June 1995 the local State administration obliged the City Hall to draw up a financing plan for local infrastructure investments, including the road network, and to fix time-limits for the purchase from their owners of plots necessary for the implementation of the plans.

14. On 4 September 1995 the applicants requested the City Hall to amend further the local plan as amended in 1994 by providing that the projected roadway would, instead of 40, be 18 metres wide, as provided for in the 1991 and 1992 decisions allowing their property to be divided into smaller construction plots.

15. In a letter to the City Hall of 6 September 1994, communicated to the applicants for information, the Częstochowa Governor stated that the construction of the roadway would not be provided for in the financing scheme for the local land development plan until at least 2010. Therefore,

no purpose was served by blocking the development of the properties concerned.

16. Subsequently, in 1995 the local municipality informed the public that it would start proceedings in order to amend the 1979-1994 land development plan in its part concerning the projected roadway.

17. On 8 August 1996 the applicants submitted a request to obtain a final construction permit for their plot no. 1/9 on Wręczycka Street. Those proceedings were subsequently stayed, the authorities considering that no decision could be given before the changes to the development plan had been adopted.

18. In early 1997 the local municipality made public the proposed amendments to that plan. In April 1997 the applicants lodged their objections against them.

19. On 23 April 1997 the applicants asked the Mayor when the Town Council would discuss the new amendments to the plan.

20. On 16 June 1997 they were informed that the Town Council would discuss the amendments to the plan at its session to be held on 19 June 1997, but that it would most likely decline to make any changes to it.

21. On 19 June 1997 the Council decided not to make any changes to the 1979-1994 plan as proposed by the applicants and other persons who had lodged objections against the amendments. It was observed that the proposed changes had resulted in a number of objections being lodged by the owners of properties concerned. It was impossible to reconcile all of the conflicting interests. It was further acknowledged that the proposed amendments to the plan would free some of the applicants' plots. However, on the whole, and having regard to the number of serious objections against the changes, it was not considered feasible to amend the plan accordingly. In particular, it would not have been feasible to build the projected roadway if it were to be only 18 metres wide, as had been proposed *inter alia* by the applicants. Moreover, had the plan been amended, the municipality would have incurred substantial expenditure for the purchase of plots which would have to be used for the construction of the roadway. It was further noted that the local investment plan did not provide for the construction of the road to begin before 2010. Nevertheless, it would be premature to give up the construction, since there remained a possibility that the necessary funds might eventually be secured from the European Union funds.

22. The applicants lodged a complaint against this decision with the Supreme Administrative Court. The court rejected their complaint as it was still open to them to have recourse to a remedy provided by local government legislation, namely requesting the Town Council to bring its actions into conformity with the law. The applicants accordingly did so.

23. On 2 December 1997 the Town Council refused the applicants' request.

24. On an unspecified later date the applicants' request for the final construction permits for their plots was dismissed, regard being had to the fact that these plots were in the vicinity of the projected road.

25. The applicants lodged a complaint with the Supreme Administrative Court against the municipality's failure to adopt changes to the local development plan. They argued that under the 1979-1994 land development plan they could not use their property in accordance with their wishes. Their requests to obtain final construction permits had been refused. The local investment plans did not provide for any work in connection with the construction of the roadway to be carried out before 2010 at the earliest and until then they were prevented from making use of their property. Therefore, they had to bear an intolerable burden in that the local municipality had adopted the plan to build a roadway which would necessitate their expropriation at some undetermined time in the future. However, that plan could not be implemented in the foreseeable future because of lack of financial resources.

26. On 23 July 1998 the Supreme Administrative Court dismissed their complaint. The court recalled the history of the local development plan dating back to 1979. The court noted the municipality's argument that the current budget did not allow for the construction of the roadway. It considered that the applicable planning laws did not make it obligatory for the municipality to amend existing land development plans in response to every request of the public. The nature of the policy functions of the municipality in the area of land development was such that the municipal organs could not be taken to be under an obligation to amend the plan once it had started the relevant proceedings.

27. The 1979 local development plan for the applicants' municipality expired on 31 December 2003 (see paragraph 38 below). Apparently no new plan was adopted thereafter. In 2004 the first applicant requested the municipal authorities to grant her initial planning permission and it was granted in April 2004.

II. RELEVANT DOMESTIC LAW

A. Changes in land development legislation during the period concerned

28. From 1984 to 1 January 1995 questions of land development were governed by the Local Planning Act of 12 July 1984.

29. On 7 July 1994 a new Local Planning Act was enacted. It entered into force on 1 January 1995.

30. On 21 December 2001 Parliament passed a law amending the Local Planning Act 1994.

31. On 27 March 2003 a new Local Planning Act was enacted which repealed the 1994 Act.

B. Outline of procedure in which local land development plans are adopted

32. Under the provisions of land planning legislation as applicable at the relevant time, land development plans were adopted by organs of local government. A decision to prepare a new plan was taken by a local council. Subsequently, the local mayor prepared, with the assistance of the local administration, a draft land development plan. The public was informed of the decision to prepare a new plan and a draft plan was to be made available to the local public for a period not shorter than 21 days. All members of the public were entitled to submit objections and comments on the draft plan.

A final plan was adopted by way of a resolution of a local council. The council, when voting on the draft plan, also decided whether and, if so, in what manner, objections and comments submitted by the local public were to be considered.

C. Compensation entitlements of owners to be expropriated in the future

33. Under the Local Planning Act of 12 July 1984 owners of properties to be expropriated in the future were not entitled to any form of compensation for damage resulting from restrictions on the use of their property and the reduction in its value originating in expropriations to be carried out at a future undetermined point in time.

34. Section 36 of the Local Planning Act enacted in 1994 created for local authorities a number of obligations towards owners whose properties were to be expropriated at an undetermined future date under land development plans adopted by competent municipal authorities. The municipalities were obliged either to buy plots designated for future expropriation under local land development plans, or to replace those plots by other plots within six months from the date on which a relevant request was submitted by the owner, or to award compensation for damage caused by the fact that the plot was designated for future expropriation.

35. However, this obligation and the corresponding claims of the owners applied only to plans adopted after the Act had entered into force, that is to say, to plans adopted by local municipalities after 1 January 1995.

36. Pursuant to the 1994 Act, plans adopted before the date of its entry into force were to expire on 31 December 1999.

37. In 1999 an amendment to the 1994 Act was adopted under which the validity of such plans was extended for a further two years, namely until 31 December 2001.

On 21 December 2001 Parliament passed a law amending the Local Planning Act 1994 which extended until the end of 2002 the validity of the land development plans adopted before 1 January 1995.

38. Under Section 87 of the 2003 Act (see paragraph 31 above), all local plans adopted before 1 January 1995 remained valid, but not beyond 31 December 2003.

39. Compensation entitlements for owners, provided for by the 1994 Act (see paragraph 33 above), were in essence maintained by the 2003 Act. Pursuant to Section 36 of that Act, when, following adoption of a new local land development plan, the use of property in the manner provided for by a previous plan has become impossible or has been restricted, it is open to the owner to claim compensation from the municipality, or to request the municipality to buy the plot. Any litigation which may arise in this respect between municipalities and owners can be pursued before the civil courts.

D. Relevant provisions of the land expropriation legislation

40. From 29 April 1985 to 1 January 1998 the rules governing the administration of land held by the State Treasury and municipalities were laid down in the Land Administration and Expropriation Act of 29 April 1985 (the “1985 Land Administration Act”).

41. Article 50 of this Act provided that properties could be expropriated only for the benefit of the State or a municipality.

42. Pursuant to Article 53 (1) of the Act, a decision on expropriation had to include in particular:

“(1) an indication of the property to be expropriated, ...

(3) an indication of the party upon whose initiative the property is being expropriated,

(4) an assessment of the amount of compensation,

(5) identification of the persons (name, surname and address) entitled to compensation,

(6) detailed factual and legal grounds,

(7) instructions on appeal procedures.”

43. Under Article 55 of the Act, expropriation was to be carried out against payment of compensation. The payment was to be made within fourteen days from the date on which a decision to expropriate had become final.

44. On 1 January 1998 the 1985 Land Administration Act was repealed and the Land Administration Act of 21 August 1997 (*Ustawa o gospodarce*

nieruchomościami – “the 1997 Land Administration Act”) was adopted, containing similar provisions on expropriation and compensation.

E. Relevant provisions of building legislation

1. Before 1 January 1995

45. Until 1 January 1995 the organisation of construction was governed by the Building Act 1974 (*Prawo budowlane*).

46. Section 3 of that Act provided that construction works could be carried out only on land designated for construction purposes in local land development plans adopted under relevant provisions of land development legislation.

Section 4 of that Act read:

“Every person has a right to build on land, provided that he or she possesses a right to use this land for building purposes and that the building project is in compliance with applicable provisions of building laws.”

47. Section 10 of the Land Administration Act 1985 (see paragraph 40 above) provided that division of land into smaller plots designated for construction purposes could be effected by way of an administrative decision only if such a division was in compliance with the local land development plan.

48. Section 20 of the Building Act 1974 provided that all essential urban planning, architectural and technical questions connected with a given building project were to be resolved before construction was started. Pursuant to Section 30, the local land development plan was the basis on which all relevant decisions were to be taken.

49. Land owners wishing to commence building projects . were obliged to obtain first from the local administration an initial development permit (*decyzja o warunkach zabudowy i zagospodarowania terenu*).

50. Under Section 28 of the Act, building works could be commenced after a final construction permit (*pozwolenie na budowę*) had been granted.

2. After 1 January 1995

51. The Construction Act 1974 was repealed by a new law enacted on 7 July 1994. It entered into force on 1 January 1995.

52. Under Section 28 (1) of the Act, building works could be commenced once a final construction permit (*pozwolenie na budowę*) had been granted.

53. Under Section 32 (4) of Act, prior to submitting to the competent local authority a request to be granted a construction permit, an owner is obliged to obtain from the local authorities a decision on building conditions

(*decyzja o warunkach zabudowy i zagospodarowania terenu*), provided for in Section 59 (1) of the Local Planning Act 2003 as it stands today.

Under this latter provision, such a decision should specify the essential characteristics of the land concerned and of the future construction project, if they differ from the use of that land provided for by the local land development plan.

Under Section 39 of the Building Act, once such a decision has been obtained, the owner can apply for a construction permit (*pozwolenie na budowę*).

THE LAW

I. PRELIMINARY OBSERVATION

54. The second applicant died while the case was pending before the Court. It has not been disputed that the first applicant was entitled to pursue the application and the Court sees no reason to hold otherwise (see, *mutatis mutandis*, *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 540, § 35, and *Sildedzis v. Poland*, no. 45214/99, 24 May 2005, § 30).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

55. The applicants alleged that their right to the peaceful enjoyment of their property had been breached. They referred to Article 1 of Protocol No. 1 to the Convention, which reads:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. The parties' submissions

1. The Government's submissions

56. The Government first submitted that ownership could not be regarded as *ius infinitivum*. They further argued that the measures complained of in the present case had served the general interest as they had been intended to resolve the communication and environmental problems of the city of Częstochowa.

57. The Government acknowledged that the applicants' right to the peaceful enjoyment of their possessions had been limited by the fact that the local development plan, as amended in 1994, had prevented them from constructing on their plots. However, the interference had been justified by the general interest of the community, namely by the need to build a roadway which would serve local transport needs. Moreover, it had been consistent with the principles of legal certainty and non-retroactivity of laws. By adopting these provisions, the legislature had given the local government authorities time to adjust local development plans to the new needs of their municipalities, without being obliged to compensate individual owners for the consequences of local development plans adopted before 1989, when the transformation of the legal and economic system of the State had been undertaken.

58. The Government concluded that the interference complained of had been lawful and served the public interest within the meaning of Article 1 of Protocol No. 1 to the Convention.

59. As to the proportionality of the interference, the Government referred to the principle of "fair balance" established by the Court's case-law which had to be struck between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. There had to be a reasonable relationship of proportionality in this connection between the means employed and the aims sought. They further referred to the wide margin of appreciation that the Contracting States enjoyed "in the area as complex and difficult as that of the development of large cities (...) in order to implement their town-planning policy" (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69).

60. In that connection, the Government submitted that the transitional provisions of the 1994 Act staying the enforcement of the right of owners to compensation introduced by that Act and the subsequent prolongations of those provisions until 1 January 2003 had been motivated by a need to protect the budgetary security of the newly-created local governments and of the State. The Government stressed that these provisions had been of a temporary nature and should be seen as part of the process of transition. They had been designed to improve the position of owners and to safeguard

their rights in connection with future expropriations for the purposes of local urban development. This process had been successfully completed on 1 January 2004 by the annulment of all local development plans adopted before 1 January 1995 (see paragraph 38 above).

61. The Government argued that the contested provisions had not lowered the level of protection of owners. They had introduced no new restrictions on owners' rights, but had only maintained restrictions on the rights resulting from the adoption of local development plans which had existed before 1994.

62. The Government further averred that the system introduced by the land planning legislation enacted in 1994 had been flexible in that it had enabled the municipalities to adjust previously adopted plans to the new conditions created by the sweeping reform of local administration adopted in 1990.

63. The Government submitted that the transitional regulations complained of in the present case had ultimately been repealed in July 2003 (see paragraph 31 above). As from 1 January 2004 all owners had been protected from the negative consequences of delays in carrying out investments foreseen in local development plans. They referred in this connection to the specific forms of compensation listed in section 36 of the 2003 Act (see paragraph 39 above).

64. As to the specific circumstances of the applicants' case, the Government acknowledged that under the applicable planning laws, the applicants had not been entitled to request the local authority to purchase their land from them in view of future expropriation, or to claim compensation. However, the Government stressed that the applicants had not been prevented from either selling or leasing their property. It had remained possible for the applicants to use the property in a manner that would not require a building permit, for example for commercial or other purposes.

65. The Government submitted that even if the inability to obtain the construction permit under the legal framework created by the 1994 amendments to the 1979 land development plan had amounted to an excessive burden for the applicants, they had been free to sell their property and buy another one, situated in an area where they could easily obtain a construction permit.

66. The Government concluded that in the circumstances of the case a fair balance had been struck between the applicants' individual rights on the one hand and the public interest and transport needs of the local community on the other.

2. The applicants' submissions

67. The applicants first argued that there had been a breach of Article 1 of Protocol No. 1 resulting from a systemic problem originating in

legislation regulating owners' rights in cases of future expropriation to be carried out at some undetermined point in time on the basis of local development plans.

68. As to whether there had been interference with their right to the peaceful enjoyment of their possessions, they submitted that the legislation applicable before 1994 had been even less favourable to the owners of plots "frozen" under local development plans, because at that time they had not had any right to compensation at all. It was irrelevant whether the 1994 Act had increased or simply maintained the restrictions of owners' rights originating in the adoption of local development plans. What was crucial was the fact that such restrictions had *de facto* existed both before and after 1994.

69. The applicants argued that the interference complained of consisted in the fact that in 1991 and 1992 they had obtained a decision allowing them to develop their land (*decyzja o warunkach zabudowy*) and a decision approving the division of their land into smaller plots (*decyzja o zatwierdzeniu projektu podziału nieruchomości*) (see paragraph 10 above). However, as a result of the changes to the 1979 plan made in 1994, they could not avail themselves of the rights conferred on them by the decisions given in 1992. Therefore, in their case the amendments to the plan adopted in 1994 had resulted not merely in maintaining limitations which had existed before, but also in the imposition of new and more stringent restrictions on the use to which they could put their land.

70. The applicants challenged the Government's opinion that a fair balance had been struck in their case between the general interests of the community on the one hand and their property rights on the other. They conceded that they had not been formally deprived of their possessions since they had remained lawful owners of the land throughout the period covered by the present case. However, as a result of the planning measures taken in their case their property rights had been stripped of any economic significance. The fate of their land remained uncertain from 1994 until 2004. While the 1994 amendments to the 1979 local development plan had provided for the construction of a roadway near their plots, the date of its actual construction remained wholly uncertain. As a result, they could not build anything on their property. The Government's argument that they could still sell their land entirely disregarded the fact that the market value of the plots had been significantly reduced as a result of the adoption of the 1994 plan and the consequential uncertain fate of the applicants' property.

71. The applicants submitted that the municipality had prepared and adopted the 1994 plan at a time when the bill which was eventually passed as the 1994 Act was being prepared by Parliament. At that time it had already been known that, under the future Act, municipalities would be obliged to provide compensation to the owners of plots "frozen" for the purposes of land development plans adopted after its entry into force.

Hence, the amendments to the plan had had the aim of leaving the applicants and other owners in the municipality without any right to compensation. They further argued that their efforts to challenge various amendments made to the plan in 1994 had failed (see paragraphs 18-26 above).

72. The applicants concluded that in the circumstances of the case the fair balance between the protection of their right to the peaceful enjoyment of their possessions and the requirements of the general interest had been upset.

B. The Court's assessment

1. General principles

73. The Court reiterates that Article 1 of Protocol No. 1 contains three distinct rules. They have been described thus (in *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37; see also, among many other authorities, *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, § 51, ECHR 2000-VI):

“The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest ... The three rules are not, however, “‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule.”

2. Whether there was interference with the peaceful enjoyment of “possessions”

74. The Court must first examine whether there was interference with the peaceful enjoyment of the applicants' possessions.

75. The Court first notes that in 1991 and 1992 the applicants obtained administrative decisions allowing them to take further steps in order to obtain a final construction permit (see paragraph 10 above). However, in 1994 proceedings were instituted by the municipality with a view to amending the local land development plan adopted in 1979. In the same year the applicants requested to be granted final construction permits (*pozwolenie na budowę*) in respect of certain plots (see paragraph 12 above).

76. The Court observes that the proceedings concerning the amendments to the 1979 plan were pending at that time and that under the planned

amendments a roadway was to be built at some undetermined point in time on the applicants' property. In view thereof, there was no progress in the proceedings in which the applicants had sought the final construction permit and they were later stayed. On an unspecified later date the applicants' request was dismissed, the authorities having had regard to the fact that their plots were in the vicinity of the envisaged road (see paragraph 24 above).

As a result, the applicants could not proceed with the construction. Their plots remained blocked in that way until 31 December 2003 when the 1979 land development plan expired (see paragraph 27 above).

77. The Court further observes that the applicants' situation was affected by the amendments to the 1979 plan because the amendments to this plan provided for a future expropriation of their land. The Court would emphasise that the applicants' situation was negatively affected not so much by the mere prospect of expropriation, but by the fact that this future expropriation was to be carried out at an undetermined point in time and in the absence of any indication, even approximate, as to its future date.

78. In that connection, the Court further notes that before the enactment of the Local Planning Act in 1994 the local authorities did not have any obligation to compensate owners of plots to be expropriated in the future.

It was only by virtue of section 36 of that Act that local authorities became obliged either to buy plots designated for future expropriation under local land development plans, or to replace those plots by other plots, or to award the owners compensation for damage caused by the fact that their plots were designated for future expropriation. However, the right to compensation applied only to plans adopted after the 1994 Act had entered into force. Consequently, they were not applicable to the applicants' situation as the plan for the municipality of Częstochowa had been adopted in 1979.

79. To sum up, the measures complained of, taken as a whole, although in law they left intact the applicants' right to continue to use and dispose of their possessions, nevertheless in practice they significantly reduced the effective exercise of that right. Not only were the applicants prevented from bringing their construction projects to fruition, their property was also to be expropriated at some undetermined future date, without there being any provision for immediate compensation under the applicable laws. The applicants' right of property thus became precarious and defeasible (*mutatis mutandis*, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, §§ 58-60).

80. The Court is therefore of the view that there was interference with the peaceful enjoyment of the applicants' possessions. The Court further considers that the measures complained of did not amount to expropriation. Likewise, they cannot be regarded as control of use of property. Accordingly, the interference falls to be examined under the first sentence of Article 1 of Protocol No. 1.

3. *Whether the interference was “provided for by law”*

81. The Court recalls that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of someone’s possessions should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

82. The Court observes that the applicants’ situation was affected by future expropriation for the purposes of the land development plan, by the refusal to grant a final construction permit (see paragraphs 76-78 above) and by a lack of any effective entitlement to compensation (see paragraph 79 above).

83. The Court notes that the first two measures were taken on the basis of the Local Planning Act of 1994. As to the applicants’ situation regarding compensation, it was affected by the operation of specific provisions of that Act which, by prolonging the validity of the local development plan under the amendments to the Local Planning Act 1994, effectively deprived them of any possibility of obtaining redress for those measures (see paragraphs 34-37 above).

84. The interference complained of was therefore “provided by law” within the meaning of Article 1 of Protocol No. 1 to the Convention.

4. *Whether the interference was “in the general interest”*

85. Any interference with a right of property, irrespective of the rule under which it falls, can be justified only if it serves a legitimate public (or general) interest. The Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is “in the public interest”. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions (see *Terazzi S.r.l. v. Italy*, no. 27265/95, § 85, 17 October 2002, and *Elia S.r.l. v. Italy*, no. 37710/97, § 77, ECHR 2001-IX).

86. In the present case the Court accepts that already in 1994 the measures complained of pursued the legitimate aim of securing land in connection with the implementation of the local land development plan. This corresponds to the general interest of the community (see, *mutatis mutandis*, *Cooperativa La Laurentina v. Italy*, no. 23529/94, § 94, 2 August 2001; *Bahia Nova S.A. (dec.)*, no. 50924/99, 12 December 2000; and *Chapman v. the United Kingdom*, no. 27238/95, § 82, ECHR 2001-I).

5. *Proportionality of the interference*

87. The Court must examine in particular whether an interference with the peaceful enjoyment of possessions strikes the requisite fair balance

between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights, and whether it imposes a disproportionate and excessive burden on the applicant (see, among many other authorities, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 93, ECHR 2005...-VI).

88. The Court considers that in the area of land development and town planning the Contracting States should enjoy a wide margin of appreciation in order to implement their town and country planning policy (see *Terazzi S.r.l.* and *Elia S.r.l.*, cited above). Nevertheless, in the exercise of its power of review the Court must determine whether the requisite balance was maintained in a manner consonant with the 'applicants' right of property (see, *mutatis mutandis*, *Sporrong and Lönnroth*, cited above, § 69).

89. In that connection, the Court first reiterates that in 1991 and 1992 the applicants obtained decisions authorising them to proceed with their construction plans. In 1994 they requested that final construction permits be granted to them in respect of certain plots. However, in the same year the local municipality launched proceedings in order to make amendments to the local land development plan adopted in 1979.

Subsequently, the proceedings concerning the applicants' request to be granted final construction permits were stayed pending the outcome of these proceedings (see paragraph 17 above). The applicants' request was eventually refused and in the refusal the authorities made reference to the provisions of the land development plan which provided for the construction of a roadway on the plots owned by the applicants (see paragraph 24 above). The authorities also referred to the future expropriation of the applicants' plots on the basis of that plan.

90. However, the Court observes that as early as 1994 it appeared that the construction of the roadway could not be undertaken in the near future. The Governor, in his letter of 6 September 1994, stated that funding of the construction of the roadway would not be provided until at least 2010.

Hence, at the time when the applicants' request to obtain final building permission was pending before the competent authorities, there were no good grounds on which to believe that the land development plan adopted in 1979 and amended in 1994 would be implemented promptly. As a result, the *de facto* blocking of any construction on the applicants' property did not serve any immediate or medium-term purpose in the interest of the community.

In the Court's view, given that it was uncertain whether the plans of the land development would be implemented in the reasonably near future, this state of affairs disclosed a lack of sufficient diligence in weighing the interests of the owners against the planning needs of the municipality.

91. The Court further emphasises that this situation lasted for a long period of time: from 1994, when the municipality commenced the proceedings in order to amend the 1979 plan, until 31 December 2003,

when this plan eventually expired under the provisions of the Local Planning Act of 2003.

92. The Court reiterates that the applicants were unable to proceed with their construction projects and were also threatened with expropriation at an undetermined point of time. What is more, they did not have any effective entitlement to compensation throughout this period.

93. The Court emphasises that the successive prolongations had a double effect: they extended the validity of the local plan and also prolonged the period during which the applicants could not claim any compensation from the municipality.

94. In this connection, the Court notes the Government's argument that the provisions of the 1994 Act were intended to improve the situation of owners, in that this Act introduced a right to compensation which previously had never existed. They also pointed out the temporary nature of the prolongations.

The Court observes that it is not in dispute that the 1994 Act was intended to improve the situation of owners to be expropriated in the future in that certain right to compensation entitlements were foreseen for them for the first time in Polish law. However, in its assessment of the proportionality of the measures complained of, the Court cannot overlook the fact that, when enacting the 1994 Act, the legislature on the one hand introduced compensatory provisions into law, but at the same time excluded the application of those provisions in respect of plans adopted before 1 January 1995. What is more, the legislature subsequently prolonged this situation on three occasions, for an overall period of nine years. Consequently, until July 2003, the date of entry into force of the Local Planning Act 2003, the applicants could not make any claim for compensation against the municipality in respect of their particular situation.

95. Lastly, the Court notes that since July 2003, when the 2003 Act entered into force, Section 36 of that Act has granted right to compensation to owners who were restricted in the use of their property as a result of the adoption of a local development plan (see paragraph 39 above). Such claims can be pursued before civil courts.

However, it observes that these provisions started to operate only after the 2003 Act had entered into force and only in respect of local land development plans adopted after that date. It has not been argued or shown that the 2003 Act provides for any retrospective right to compensation for the prejudice suffered by the applicants, before its entry into force, as a result of restrictions originating in a land development plans adopted in the past.

Consequently, the entry into force of the 2003 Act did not alter the applicants' situation.

96. The Court notes the Government's argument that by adopting these provisions the legislature had given the local government authorities time to adjust land development plans to the new needs of the municipalities, without the latter being obliged to compensate individual owners for the consequences of local development plans adopted before 1989, when the transformation of the legal and economic system of the State had been undertaken.

The Court is aware that the difficulties in enacting a comprehensive legal framework in the area of urban planning constitute part of the process of transition from a socialist legal order and its property regime to one compatible with the rule of law and the market economy – a process which, by the very nature of things, is fraught with difficulties. However, these difficulties and the enormity of the tasks facing legislators having to deal with all the complex issues involved in such a transition do not exempt the Member States from the obligations stemming from the Convention or its Protocols (see *Schirmer v. Poland*, no. 68880/01, 21 September 2004, § 38).

97. Having regard to the above considerations, the Court is of the view that a fair balance was not struck between the competing general and individual interests and that the applicants had to bear an excessive individual burden.

98. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. ARTICLE 41 OF THE CONVENTION

99. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

1. Damage claimed in the present case

100. The applicants claimed 1,160,500 Polish zlotys (PLN) in compensation for pecuniary damage. This amount was broken down as follows:

- (i) PLN 8,635 in respect of real estate taxes which the applicants had had to pay for the property from 1995 until the end of 2004;
- (ii) PLN 9,000 in respect of reimbursement of maintenance costs of the property;
- (iii) PLN 100,000 in respect of material damage which the property sustained during the material time;
- (iv) PLN 5,000 in respect of damage resulting from repeated burglaries at the property;

(v) PLN 837,884 corresponding to the price which the applicants could have obtained if their plan to have their property divided into smaller construction plots and sold to private parties had been brought to fruition, with the capital thus obtained being paid into their bank account plus interest accruing from February 1995 to July 2003.

101. The applicants further sought compensation for non-pecuniary damage in the sum of PLN 200,000¹. They argued that as a result of the contested decisions and the deficiencies in the legislative framework concerning their property, they had suffered considerable anguish. They emphasised the distress they had suffered as a result of their situation which frustrated their projects to use and develop their property and to derive reasonable profit from it.

102. The Government were of the view that the amounts claimed by the applicants were excessive.

103. In the circumstances of the case and having regard to the parties' submissions, the Court considers that the question of the application of Article 41 of the Convention is not ready for decision and reserves it, due regard being had to the possibility that an agreement between the respondent State and the applicant may be reached (Rule 75 § 1 of the Rules of Court).

2. Costs and expenses

104. The applicants also claimed EUR 3,500 for the costs and expenses incurred in the proceedings before the domestic courts and before the Court.

105. The Government considered that the amount claimed by the applicants was excessive.

106. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the amount of EUR 2,500 covering costs under all heads, less EUR 853 paid to the applicant in legal aid, plus any tax that may be chargeable on that amount, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement.

3. Default interest

107. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

¹ Approximately EUR 50,000.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
2. *Holds* that as far as any pecuniary and non-pecuniary damage is concerned, the question of the application of Article 41 is not ready for decision and accordingly;
 - (a) *reserves* the said question;
 - (b) *invites* the Government and the first applicant to submit, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be;
3. *Holds*
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,647 (one thousand six hundred and forty seven euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 14 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President